

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Miller Post Office
Miller, Nebraska

Docket No. A2012-73

PUBLIC REPRESENTATIVE COMMENTS
SUPPORTING REMAND
(January 30, 2012)

After careful review of the Postal Service's Final Determination, the materials in the Administrative Record, the arguments presented by Petitioner, and the Postal Service Comments, the Public Representative concludes that the Postal Service has followed applicable procedures. However, the decision to close the Miller Post Office is arbitrary and capricious and unsupported by substantial evidence.

The Miller Post Office has 62 Post Office Box customers.¹ The new administrative Post Office (Amherst, Nebraska) has only 22 boxes available for rent. FD at 2. The Sumner Post Office, located seven miles from Miller, has 46 available boxes. *Id.* Between them, the Amherst and Sumner Post Offices could accommodate the existing Miller boxholders. However, Sumner is on the RAOI list.²

The Final Determination to close the Sumner Post Office is likely to be posted as soon as the current moratorium expires. The community meeting to discuss the potential closing of the Sumner Post Office was held October 13, 2011, in the Sumner Community Hall.³ The Proposal to close the Sumner Post Office was posted from September 30, 2011, through December 1, 2011.⁴

¹ Administrative Record (AR), Item 47, Final Determination (FD) at 2.

² United States Postal Service Comments Regarding Appeal, January 10, 2012, at 3, n.7 (Comments)

³ See Jessica Kokesh, "Sumner residents fight to keep post office," Lexington Clipper Herald, October 14, 2011, <http://www.lexch.com/articles/2011/10/19/news/local/doc4e987e8b8648f480274867.txt>, as viewed January 26, 2012.

⁴ See Notice of Taking Proposal under Internal Consideration, December 2, 2011 (attached).

The Postal Service argues that the Commission may not take account of the likely closing of the Sumner Post Office. It states that

the statute governing this appeal proceeding, 39 U.S.C. § 404(d), limits the Commission's review to facts contained in the administrative record, and [] there has been no change yet in operations at the Sumner Post Office. The impact of potential discontinuance of the Sumner Post Office on postal services offered to Miller residents would, of course, be considered should the feasibility study of the Sumner Post Office advance further.⁵

However, the Postal Service should never have relied on Sumner in the first place. At the time that the Final Determination to close Miller was posted, the Proposal to close Sumner had been posted for over a month.⁶ The same manager of Post Office operations was responsible for the proposals to close both offices. *Compare* AR, Item 37, *with* Attachment. The Sumner Post Office appeared on the RAOI list one day after the Proposal to close Miller was posted.⁷ Thus, during the entire time that the Miller Proposal was under internal consideration, the Postal Service knew that the Sumner office might not be available to accommodate Miller boxholders.

The next closest Post Office is in Elm Creek. It is located 15.1 driving miles from the Miller Post Office (according to MapQuest). Regardless of how many boxes may be available at Elm Creek, the Postal Service has not considered whether it can provide effective service to Miller customers from that distance.

In two recent cases, the Commission found that the Postal Service had not adequately provided for effective postal services because there were fewer available

⁵ Comments at 3, n.7. Since the feasibility study had progressed beyond the proposal stage at the time the Postal Service filed its brief, it could have demonstrated that it had considered the effect of closing Sumner on Miller residents by quoting from the Sumner Administrative Record. It did not. That Administrative Record is not currently available for public inspection because neither a proposal nor a final determination to close the Sumner Post Office is posted at this time. See 39 CFR § 241.3(d)(4)(v). Only the notice of taking the proposal under internal consideration is currently posted.

⁶ The Final Determination was posted on November 3, 2011. FD at 1. The Proposal to close Sumner was posted on September 30, 2011. See Attachment.

⁷ The RAOI list was filed with the Commission on July 27, 2011. Docket No. N2011-1, Library Reference USPS-LR-N2011-1/2. The Proposal to close the Miller Post Office was posted on July 26, 2011. See AR, Item 33, at 1.

boxes at the administrative Post Offices than current boxholders at the Post Offices to be closed. The Commission remanded those cases. In *Enloe* the Commission stated that

[w]ithout a more complete explanation of how the closing of the Enloe post office will affect post office box customers, the Commission cannot conclude that the Postal Service has satisfied its obligation to consider whether the replacement service it proposes is effective and regular service, as required by 39 U.S.C. § 404(D)(2)(a)(iii).⁸

In *Innis* the Commission stated that

the Final Determination indicates that the Innis post office has 89 post office box [customers]. By contrast, the Batchelor post office has only 56 post office boxes available. There is no explanation of the effect on customers of this shortfall.⁹

The Commission should remand this case as well.

Respectfully submitted,

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⁸ Docket No. A2011-54, Order Remanding Determination, Order No. 1038, December 13, 2011, at 8. There were 100 current boxholders and only 62 available boxes. *Id.*

⁹ Docket No. A2011-34, Order Remanding Determination, Order No. 974, November 16, 2011, at 10. The Order actually states that there were 89 boxes at Innis rather than 89 box customers. However, the Administrative Record makes clear that there were 89 boxholders. See A2011-34 AR, Item 1.

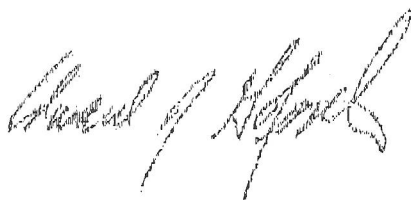
**NOTICE OF TAKING PROPOSAL AND COMMENTS
UNDER INTERNAL CONSIDERATION**

Date 12/02/2011

Postal Customers of the Sumner Post Office: The Postal Service appreciates receiving the views of those of you who submitted comments on the proposal to close the Sumner Post Office, which was posted 09/30/2011 through 12/01/2011. These comments will be considered carefully as the matter is reviewed further in my office and at higher levels within the Postal Service.

When a final decision is made by the Postal Service, that decision will be posted in place of this notice. If the decision is to approve the proposal, any customer of the Sumner Post Office who disagrees will have the right to appeal that decision to the Postal Regulatory Commission in Washington, DC.

Sincerely,



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6005 LOCKHEED COURT
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